

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PABLO ALVAREZ,

Defendant.

CASE NO. 14-cr-1748-GPC

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
STAY RESTITUTION PENDING  
APPEAL AND ORDERING  
DEFENDANT TO MAKE  
RESTITUTION PAYMENTS TO  
THE DISTRICT COURT'S  
REGISTRY**

[Dkt. No. 84.]

Presently before the Court is Defendant Pablo Alvarez's ("Defendant") motion to stay restitution pending appeal. (Dkt. No. 84.) The United States has opposed the motion. (Dkt. No. 89.) For the reasons set forth below, the Court **GRANTS** Defendant's motion to stay restitution pending appeal, and also **GRANTS** the United States' request to order Defendant to make restitution payments to the district court's registry.

**BACKGROUND**

On October 31, 2014, Defendant was sentenced after pleading guilty to transportation of illegal aliens, in violation of 8 U.S.C. § 1324. (Dkt. No. 66.) On January 27, 2015, Defendant was ordered to pay restitution in the amount of \$2,900 to San Diego Rent A Car. (Dkt. No. 83.)

On February 4, 2015, Defendant filed a motion to stay restitution pending

1 appeal. (Dkt. No. 84.) Defendant filed his notice of appeal relating to the order of  
 2 restitution on February 9, 2015. (Dkt. No. 86.) The United States filed its opposition  
 3 to the motion to stay restitution on February 19, 2015. (Dkt. No. 89.)

#### 4 **LEGAL STANDARD**

5 Federal Rule of Criminal Procedure 38(e) provides that “[i]f the defendant  
 6 appeals, the district court . . . may stay – on any terms considered appropriate – any  
 7 sentence providing for restitution under 18 U.S.C. § 3556.” Fed. R. Crim. P. 38(e)(1).

#### 8 **DISCUSSION**

9 Defendant argues that the Court should stay the criminal restitution order  
 10 pending appeal based on the factors for a stay pending appeal in the civil context:  
 11 (1) whether the stay applicant has made a strong showing that he is likely to succeed  
 12 on the merits; (2) whether the applicant will be irreparably injured absent a stay;  
 13 (3) whether issuance of the stay will substantially injure the other parties interested in  
 14 the proceeding; and (4) where the public interest lies. (Dkt. No. 84-1 at 3-4 (citing  
 15 *Hilton v. Brauskill*, 481 U.S. 770, 776 (1987)).<sup>1</sup> He contends that: (1) he is likely to  
 16 succeed on the merits because the magistrate judge failed to properly advise him of  
 17 possible restitution as a penalty, he was not a cause of the damage to the rental car, and  
 18 a recent Supreme Court case supports his constitutional challenge; (2) he would be  
 19 irreparably harmed if he prevails on appeal and is not able recover the monies from San  
 20 Diego Rent A Car, particularly because he is indigent; (3) San Diego Rent A Car will  
 21 not be substantially injured by a stay because it is a small amount of monies for a  
 22 business, and it did not request restitution until being contacted by the government; and  
 23 (4) the public interest is not implicated. (*Id.* at 4-6.) Defendant also argues that he has  
 24 not waived appeal of the restitution order. (*Id.* at 1-3.)

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 27 <sup>1</sup>The Court notes that it is unclear whether it is appropriate to apply the *Hilton*  
 28 test here given that this is a criminal rather than a civil case. Further, some courts have  
 held that the *Hilton* test does not apply to civil monetary judgments, which is more  
 analogous to restitution. *See Bolt v. Merrimack Pharms., Inc.*, No. 04-cv-0893-WBS-  
 DAD, 2005 WL 2298423, at \*2 (E.D. Cal. 2005).

1 The United States summarily contends that this Court should deny Defendant's  
 2 motion for a stay of the order of restitution. (Dkt. No. 89 at 2.) Alternatively, the  
 3 United States requests that the Court require Defendant to make his restitution  
 4 payments to the district court's registry, to protect San Diego Rent A Car if  
 5 Defendant's appeal is unsuccessful.<sup>2</sup> (*Id.*)

6 Under Rule 38(e)(1), the Court has the discretion to stay restitution pending  
 7 appeal, and to set whatever terms the Court considers appropriate during the pendency  
 8 of the stay. Fed. R. Crim. P. 38(e)(1). Given Defendant's concerns regarding  
 9 recovering the monies from San Diego Rent A Car if his appeal is successful, and the  
 10 lack of substantial injury to San Diego Rent A Car in delaying their receipt of  
 11 restitution, the Court exercises its discretion and **GRANTS** Defendant's request to stay  
 12 restitution pending appeal. However, the Court also **GRANTS** the United States'  
 13 request that Defendant deposit his restitution payments into the district court's registry  
 14 to protect San Diego Rent A Car.

15 **IT IS SO ORDERED.**

16  
 17 DATED: April 10, 2015

18   
 19 HON. GONZALO P. CURIEL  
 20 United States District Judge  
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 26 <sup>2</sup> The United States cites Rule 38(e)(2), which provides that "[t]he court may  
 27 issue any order reasonably necessary to ensure compliance with a restitution order or  
 28 a notice order after disposition of an appeal, including: (A) a restraining order; (B) an  
 injunction; (C) an order requiring the defendant to deposit all or part of any monetary  
 restitution into the district court's registry; or (D) an order requiring the defendant to  
 post a bond." Fed. R. Crim. P. 38(e)(2). (Dkt. No. 89 at 2.) However, by its terms, this  
 provision only applies "after disposition of an appeal."